

Diane Dunstan - FW:Medicaid Pharmacy Article in Arkansas/discussion of lawsuit

Page 1 |

Item: #22

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Date: Sat, Feb 9, 2002 9:58 AM
Subject: FW:Medicaid Pharmacy Article in Arkansas/discussion of lawsuit

We have obtained CMMS approval of a plan amendment to reduce pharmacy reimbursement effective March 1 to AWP minus 14%, generics (unless MACed) minus 25%, the fee stays at \$5.51. The changes are based on our Meyer & Stauffer survey. The attached newspaper article will surprise none of you that this action is not winning us awards of merit with the providers. We announced the change in late November as a part of a broader series of actions due to revenue shortfall, but would have made a change in pharmacy regardless. Strangely we got little protest and no counter proposal until after the feds approved the plan two weeks ago in part because of the distraction of our proposal to bid nursing home pharmacy to a single vendor (we got no bids, so moot point on that).

At the legislative hearing detailed in the article there was ready

acknowledgement that Medicaid is now the most profitable of all third party payers for pharmacy and no dispute that even after the change it will remain at least as profitable. The president of the Arkansas Pharmacist's Assoc. hit the issue even better than I could, from up scale college town 40 miles north of Little Rock, said 24% of his stores business is Medicaid---in response to a question from one of more supportive legislators the gentlemen acknowledged that yes, he accepts less than Medicaid payment levels from most of the other 76%---but that if he had to take same from Medicaid he would have to lay off an employee, and that one of his employees is his wife. I'm not unsympathetic, these are good people working hard to make a living in a market place that has changed markedly with managed care and PBM's---but I'm also challenged by law to live within the Medicaid allotted budget.

The threat is now there will be a lawsuit alleging that if we reduce payments access will be compromised(seeking to make a federal reg violation) when some stores in the depressed areas of the Mississippi close. What I expect to happen is they will find the most remote provider, bring him forward to say "yes, I will close if the new payment system is implemented". As near as we can tell case law doesn't support this point based only on predictions a store(s) would close---we think there is a case in Illinois that supports this. Truth is drug stores, and other businesses have been closing in the delta for years due to wholesale population shifts away from the area.

Any advice, case histories you might be familiar with would be much appreciated.

Ray

-----Original Message-----

From: Hanley, Ray
Sent: Friday, February 08, 2002 9:36 PM
To: Hanley, Ray
Subject:

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Contents **Pharmacists Oppose Medicaid Cuts By Elizabeth Caldwell**
Arkansas News Bureau LITTLE ROCK -- Pharmacies will close and Medicaid recipients will have difficulty getting prescription drugs under a plan designed to save the state money, lawmakers were told Thursday. Also, two state senators took Department of Human Services officials to task for cutting services to poor people to balance the state's budget. About 35 pharmacists attended a legislative Rules and Regulations Subcommittee on Thursday to protest reduced reimbursements for Medicaid prescriptions, set to take effect March 1. The reductions were announced in November to help offset a \$142 million budget shortfall, the largest in state history. David Smith of Conway, president of the Arkansas Pharmacists Association, told the subcommittee that pharmacies will layoff employees and some businesses will close or quit participating in Medicaid. "These people will not have access to care," Smith said. "You will see the ripple effect on the economy in these areas that are already economically depressed." He said one pharmacy has said it will lay off two employees and another will lose \$29,000, meaning another couple of layoffs. One Dermott pharmacy, that relies on Medicaid for half its business, will probably close; and another will lose

\$15,000 on brand name drugs. A Portland pharmacy likely could close and the next closest pharmacy is 20 miles away, Smith said. "We're talking about health care of our public. We cannot close our eyes to these people," Smith said. Ray Hanley, DHS' Medicaid director, said recent surveys show that the pharmacies will still be able to make a profit with the reduced reimbursement amounts. One reason for the high cost of the program is that physicians are prescribing high cost brand name drugs when generics would do. Hanley said the department has been working with physicians for three years to encourage them to change their prescription habits. Richard Beck, the association's executive vice president and chief executive officer, said Hanley hasn't done enough. He said DHS should require physicians to get prior approval to use many brand name drugs. He said the state could save \$2 million a year if it required physicians to switch to the generic for Prozac, a common antidepressant. Beck and Smith also said the state should raise the reimbursement on generic drugs as an incentive for physicians and pharmacists to switch from name brands. Sens. Terry Smith, D-Hot Springs, and Jodie Mahony, D-El Dorado, criticized Hanley for the way the department has responded to the budget shortfall. Smith asked Hanley if he had followed a 1997 directive from Gov. Mike Huckabee that requires state agencies to determine if a proposed policy change would affect families. Hanley said he had not, but said the cuts were "not inconsistent" with the Huckabee directive. "If we overspend and pay for things that are not medically necessary, that more than anything else, makes it harder to adhere to things like this and provide later services that are necessary," Hanley said. Mahony called DHS "totally irresponsible" for actions it has taken, or not taken, in dealing with the budget cuts. He said Hanley was "discouraging use of generic drugs" for not making it more difficult for physicians to prescribe brand names. Mahony also said DHS should have advocated for Huckabee to call a special legislative session to deal with the Medicaid cuts. Several legislators have said there are millions of dollars sitting in accounts that could be appropriated for Medicaid.

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Diane Dunstan - FW:Medicaid Pharmacy Article in Arkansas/discussion of lawsuit

Page 4

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10/16/09
10/16/09
10/16/09

10/16/09
10/16/09
10/16/09